IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 6TH MARCH 2007 / 15TH PHALGUNA 1928

RP.No. 783 of 2006()

AGAINST THE JUDGEMENT/ORDER IN WPC.31444/2005
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REVIEW PETITIONER/2nd RESPONDENT IN WPC:

KEEZHMAD GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
KEEZHMAD, ERNAKULAM.

BY ADV. SRI.K.SREESAKUMAR

RESPONDENTS:
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1. G. VISWANADHANKUTTY, AGED 65,
S/O. GOPALAN PILLAI, RESIDING AT HOUSE NO.315 A,
4 CENT COLONY, 10, ALUVA,
ERNAKULAM DISTRICT.

2. OMBUDSMAN FOR LOCAL SELF GOVERNMENT
INSTITUTIONS, REPRESENTED BY ITS SECRETARY
BARTON HILL BUNGALOW, KUNNUKUZHI,
VANCHIYOOR P.O., TRIVANDRUM.

3. THOPPIL ABU, FORMER PRESIDENT
KEEZHMAD GRAMA PANCHAYATH, KEEZHMAD,
ERNAKULAM.

4. LAISA SEBASTIAN, FORMER PRESIDENT
KEEZHMAD GRAMA PANCHAYATH,
KEEZHMAD, ERNAKULAM.

R1 BY ADV. SRI.P.C.SASIDHARAN
R2 BY ADV. SRI.K.J. MOHAMMED ANZAR, GOVT. PLEADER.

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 06/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

R.P. No. 783 OF 2006
in
W.P.(C) No. 31444 of 2005

Dated this the 6th day of March, 2007

JUDGMENT

My judgment in WP(C) No.31444 of 2005 is sought to be reviewed by the Keezhmad Grama Panchayat-the 2nd respondent in the Writ Petition on various grounds. The Writ Petition was filed by the 1st respondent in the Review Petition arraying the Ombudsman for Local Self Government Institutions as the first respondent and the Panchayat as the 2nd respondent apart from the three other respondents. The main prayer in the Writ Petition was for quashing Ext.P2 order issued by the Ombudsman for Local Self Government Institutions under which the Tribunal dismissed CMP No. 42 of 2005 which was filed by the Writ Petitioner seeking execution of an earlier order, Ext.P1 passed by the Ombudsman in OP No.102 of 2002. Under Ext.P1 the Ombudsman had directed the Panchayat to give the petitioner requisite land for construction of a small house and the requisite fund for completing the construction and directed the Panchayat to file and complete the proceedings in that regard before 31.3.2005. But under Ext.P2 the Ombudsman dismissed the CMP No.42 of 2005 holding that the Writ Petitioner has misused the assistance given by the Panchayat at an

earlier occasion and therefore the Panchayat is justified in not obeying Ext.P1. I had noticed in my judgment that in spite of service of the notice on the Panchyayat, the Panchayat had not filed any counter affidavit. However, I decided the case on its merits and passed the judgment allowing the Writ Petition.

2. Very elaborate submissions were addressed before me by Sri.K.Sreesakumar, learned counsel for the petitioner who submitted at the very outset that the posting of this case for hearing on the day the judgment was delivered was not noticed by him because his name was not shown correctly in the cause list.

3. Along with the review petition, the Panchayat has produced Annexure A2(a) document which is copy of the Pattayam No. PF-10/99 dt.16.3.99 issued to the 1st respondent in the Review Petition and Annexure R2(b) document which is the true copy of the criteria for the selection under the scheme for construction of house under the people's planning scheme 2001-02. It is contended on the basis of Annexure R2 (c) that the non-selection of the Writ Petitioner was in conformity with the criteria stipulated under Ext.R2(b) and the marks secured by him was much lower than those secured by several other candidates. Annexure R2(c) produced along with the Review Petition is copy of the complaint submitted by the Writ Petitioner and R2(d) is copy of the sale deed executed by the Writ Petitioner in respect of the priority allotted to him. Under Ext.R2(a) priority was given to one Sri.Rajesh and Ammini

Vasu in the light of Ext.R2(d). Ext.P2 order of the Ombudsman, it is contended, was perfectly in order.

4. Even before the Review Petition was admitted, the 1st respondent, the Writ Petitioner has filed a counter affidavit and elaborate submissions were addressed before me by Sri.K.Sreesakumar, Counsel for the Review Petitioner and Mr.Sasidharan, counsel for the Writ Petitioner. On hearing, Mr.Sreesakumar submitting that the Panchayat does not have an inch of land with them to be offered to the Writ Petitioner, I directed him to furnish information as to the value of the lands in the locality. He submitted in response to that direction that the value of land in the locality will range between Rs.50,000 and Rs.5 lakhs per cent. The learned counsel for the 1st respondent would submit that the Panchayat's version regarding the value of land is highly exaggerated.

5. Even though my judgment which is sought to be reviewed has been issued on the basis that no counter affidavit has been filed by the Panchayat, I had actually considered the merits of the matter and strictly speaking , I do not find any warrant for exercising review jurisdiction on that judgment. At the same time the submissions of the learned counsel for the Panchayat that but for his omission to note his name from the cause list in which the name was spelt wrongly, he would have entered appearance and filed a counter affidavit has some appeal.

6. However, considering the pitiable condition in which the Writ

Petitioner is presently placed I am inclined to recall my judgment only by imposing conditions. Accordingly, the Review Petition will stand allowed and the judgment dt.27.07.2006 passed in WP(C) No.31444 of 2005 will stand recalled, provided the review petitioner complies with the conditions given below:

The Review Petitioner shall deposit a sum of Rs.28,000/- as a short term deposit with the High Court extension branch of State Bank of India and produces the original receipt before this Court after getting a lien noted towards the of the petitioner in WP(C) No.31444 of 2005. Deposit and production as directed above will be made by the Panchayat within three weeks from today, failing which the Review Petition will stand dismissed.

PIUS C. KURIAKOSE, JUDGE

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